v. *Chambers,* 53 Cal. 635. New York occupies a peculiar position, holding that want of jurisdiction may always be set up against a judgment, and that the recital of jurisdictional facts in the record is not conclusive but only *prima facie* evidence. *Ferguson* v. *Crawford et al.,* 70 N. Y. 253, 26 Am. Rep. 589.

PRESCRIPTION—DOES NOT JUSTIFY PUBLIC NUISANCE AGAINST INDIVIDUAL RIGHTS.—Action was brought by an abutter to recover for violation of his rights of air, light and access, caused by the construction and maintenance of an elevated railroad; defendants pleaded title by prescription. *Held,* defendants acquired no rights by prescription, for they entered under no pretense of right, because the structure was beyond the franchise granted them. It was, therefore, a public nuisance, and prescription could not justify it, even as against a private person. *Bremer et al.* v. *Manhattan Ry. Co. et al.* (1908), — N. Y. —, 84 N. E. Rep. 59.

An action by an individual for special damages which he may have sustained from a public nuisance will not be barred by the lapse of the prescriptive period. The public right is, of course, not barred, and the individual is regarded as claiming under, and by virtue of, the public right. *Morton* v. *Moore,* 15 Gray (Mass.), 573; *Mills* v. *Hall,* 9 Wend. (N. Y.), 315. But a distinctly private nuisance may be prescribed for, notwithstanding the fact that it may be a public nuisance as well. *Inhabitants of New Salem* v. *Eagle Mill Co.,* 138 Mass. 8; *Borden* v. *Vincent,* 24 Pick. (Mass.) 301; *Charnley* v. *The Shawano Etc., Co.,* 109 Wis. 563. The distinction is not a clearly reasonable one, but it is recognized by the authorities. As to prescription against the public rights, see 6 MICH. LAW REV., p. 580.

PROHIBITION—WHEN GRANTED—THREATENED PROSECUTION.—One Darnell was convicted for selling spirituous liquors within two miles of the corporate limits of Clendennin. The Recorder, acting in the absence of the Mayor, threatened to prosecute him if he again attempted to engage in said business, and as often as he attempted to do so, to cause his imprisonment. Pending an appeal, Darnell, alleging lack of jurisdiction, petitioned for a writ of prohibition to prohibit the defendants from prosecuting him, as threatened. The Circuit Court awarded the writ, but the Court of Appeals *held,* that the writ of prohibition can only operate on a pending suit, and cannot be used to prevent the institution of an action. *Darnell* v. *Vandine, Mayor, et al.* (1908), — W. Va. —, 60 S. E. Rep. 996.

The writ of prohibition lies to prohibit the exercise by an inferior tribunal or officer of judicial powers with which he is not legally vested, and to prevent actions in excess of the jurisdiction conferred by law. *Speed* v. *Common Council,* 98 Mich. 360, 39 Am. St. Rep. 555, 57 N. W. 406. Upon application for the writ the question is whether the court has jurisdiction of the general class of cases to which the particular case belongs. *Fischer* v. *Superior Court,* 98 Cal. 67; *Sherwood* v. *N. E. Knitting Co.,* 68 Conn. 543; *Ex parte Ellyson,* 20 Gratt. (Va.) 10; *McConiha* v. *Guthrie,* 21 W. Va. 134;